

## **REMARKS**

### **Overview**

Claims 1-41 are pending in the present application. A Final Rejection has been made to the claims. Applicant presents this response to the Final Rejection concurrently with a Request for Continued Examination (RCE). Reconsideration is respectfully requested.

The principle rejections of Applicant's claims are based on anticipation or obviousness citing Hatakama US Patent 5,774,118 and/or Cook US Patent 5,727,950. Applicant has submitted evidence to antedate both of these references and remove them as legal prior art. Some of the claims have also been rejected as nonstatutory under 35 U.S.C. § 101. Applicant has attempted to add language to the claims to remedy this rejection.

Applicant has carefully reviewed the Final Rejection and respectfully submits Applicant's evidence is sufficient under appropriate law to antedate both Hatakama and Cook. But also, Applicant submits herewith additional evidence to antedate Hatakama and Cook (see enclosed SECOND SUPPLEMENTAL DECLARATION and Exhibits L and M). Additionally, Applicant respectfully submits the claims are statutory under § 101.

### **§ 102 and § 103 Rejections based on Hatakama and/or Cook**

The Final Rejection takes the position Applicant's evidence of record is ineffective to antedate these two references and maintains rejections to all the claims based upon them. Applicant respectfully submits the record is sufficient to establish prior invention of Applicant's claimed invention prior to the earliest effective date of either Hatakama and Cook and that the rejections are overcome on that basis.

Rule 131 provides a method by which a reference under § 102 or § 103 can be negated. Under established precedent, Applicant must show either (1) reduction to practice prior to the effective date of a reference or (2) conception prior to the effective date and subsequent due diligence. The law clearly sets forth Applicant must show facts establishing completion of the invention in this country prior to the effective date of the reference (as opposed to mere assertions or legal opinions). However, as a general rule, the USPTO must accept the factual allegations of a Rule 131 Declaration as true. Herman v. William Brooks Shoe Co., 39 U.S.P.Q.2d 1773, 1777 (S.D.N.Y. 1996).

The facts to show completion of the invention does not mean there must be a showing of reduction to practice of every embodiment of the invention or establishment of reduction to practice commensurate with the disclosure requirements of 35 U.S.C. § 112. In re Hostettler, 356 F.2d 562, 148 U.S.P.Q. 514 (CCPA 1966) (see particularly pages 565-67). It is sufficient the evidence show possession of so much of the concept of the invention as to make the entire invention, or the part needed to overcome the references, obvious to one of ordinary skill in the art. In re Spiller, 500 F.2d 1170, 182 U.S.P.Q. 614 (CCPA 1974).

The Final Rejection takes the position that Applicant's evidence of record is ineffective for the following types of reasons:

- a. It does not include demonstrative evidence of the claimed invention or that there was a complete disclosure to another;
- b. The evidence shows possession of a vague idea but not the means to practice it or an interaction between the elements of the claimed invention;
- c. That it is based primarily on Applicant's general allegations and does not show specifics of the claimed invention.

Applicant respectfully asks reconsideration. Below is hopefully clarification of how the evidence of record is clear, specific, comprehensive and demonstrative in establishing facts sufficient for antedating Hatakama and Cook.

The evidence establishes an actual reduction to practice prior to the effective date of the references. Applicant created the instructional text files using Applicant's invention and these files are burned into the CD ROM, an early prototype version of the claimed invention, in Spring 1995. That prototype software program was used as demonstration of the entire claimed invention prior to the effective dates of Hatakama and Cook.

Exhibit E of record is a photocopy of the actual prototype CD ROM which contain the interactive learning programming implementing Applicant's claimed invention. By this factual evidence, Applicant has established the existence of those CD ROMs.

Exhibit G is a physical printout of contents of the March 7, 1995 CD of Exhibit E. The Supplemental Declaration of Prior Invention previously filed with Applicant's August 7, 2006 response, at page 4, numbered paragraph 15, specifically points out where the software includes two levels of sophistication of additional learning options for the different topics to be learned. It points out how those additional learning options ("huh" and "tell me more") are coordinated with text, video and/or audio ("P" is a code for the "plain" or "huh" level, and "E" is a code for "enhanced" or "tell me more" level).

Exhibit H, as explained at paragraph 16 of the Supplemental Declaration of Prior Invention, is a printout from one of the CDs of Exhibit E showing a display screen for the learning program, establishing it to be an interactive program for government employees regarding use of the "government wide purchase card" (essentially to train government

employees how a government credit card should be used). Note the buttons along the bottom that include "learn about it", "evaluate yourself" and "get advice".

Exhibit I is a printout from one of the CDs of Exhibit E in the "learn about it" mode of the program (a section including instructional information related to a subject to be learned) (see the top caption on the screen display which states "learn about it"). Also note the bottom caption which states "one of 15 topics completed". The left side of the screen presents information to be learned about use of the government-wide purchase credit card. It includes interactive diagrams and text for the user to learn the topic. But also note the right side of the screen. It specifically provides several alternative additional instructional options for the user. It prompts the user that these are available with the phrase: "I am ready to continue with the discussion. Give me some instruction before we discuss this." The two options available to the user are "huh?" and "tell me more!". The first is the plain or lower sophistication option. The second is the enhanced or higher sophistication option. The user can select either one at any time and in any order.

Exhibit J is what the user would see if they hit the "huh?" link. Note how this additional instructional information is in a less sophisticated, plain form (e.g. "This may look complicated to you, but it really isn't! The old system had a whole slew of procurement and finance people involved to process requisitions and payments for even the smallest purchases. This is a lot simpler!"). Note further that there is audio involved (see volume buttons to right). Note further there is a "go back" button to go back to the topic being learned.

Exhibit K is a screen display if the additional learning option "tell me more!" is selected at Exhibit I. Note how it is more sophisticated and enhanced learning assistance (e.g. "These five people will help the government reduce its cost of acquisition substantially. Some agencies spend more than \$75.00 ... These five key people in the government-wide purchase card

program will help budgets go much further by cutting administrative costs substantially.") The screen of Exhibit K likewise has a volume button and a "go back" button.

Thus, in compliance with the law regarding antedating a reference, it is respectfully submitted the evidence of record (e.g. Exhibits E-K), explicitly establish a factual demonstration of the existence of an actual working prototype of Applicant's claims prior to the effective dates of both Hatakama and Cook.

To emphasize this, below is a chart. The column on the left includes the preamble and each step of Applicant's claim 1. The column in the middle points to the evidence in the exhibits that demonstrates these steps specifically. The column to the right indicates the parts of Applicant's specification that pertain to these steps.

Applicant's Claim 1	Evidence of Record	Cite to Applicant's Specification
1. A method of providing instruction to a user of an instructional program comprising:	EXHIBITS E, F, G and H establish the existence of demonstration interactive instructional programming on CD ROMS for an Information Processing Device such as a computer; the programming has a plurality of sections or topics to be learned related to the subject (e.g. learning how to use a government-wide purchase credit card).	Figures 1-3 (which show a computer using a CD ROM, the topic module of Figure 2 which is an instructional program that has multiple levels of sophistication of additional learning options)
presenting an interactive instructional program to the user via an information processing device, the program having a plurality of sections each comprising instructional information related to a subject;	EXHIBITS F-H (see above)	Figures 1-3
making available to the user via the information processing device additional instructional options related	EXHIBIT I (on one display screen from the CD ROM shows the topic of the subject matter to be learned to the left	Figure 3 (almost identical to Exhibit I)

to the instructional information for one or more sections in the program;	and the user selectable options of "huh?" and "tell me more!" on the right, the two additional instructional options for that section of the program)	
the additional instructional options for said one or more sections including additional instructional information available to the user via the information processing device in at least first and second levels of sophistication, any of the at least first and second levels of sophistication being user-selectable via the information processing device, at any time and in any order.	EXHIBITS J-K which specifically show one example of a first level sophistication ("huh?" or plain) additional learning assistant option if selected by the user; and a second level sophistication ("tell me more!" or enhanced), a more sophisticated user selectable additional instructional option; both related to the specific topic being learned at Exhibit I)	Figures 2 and 3 (which show the two levels of sophistication option; Figure 2 shows how the user can go out for either option and come back to the topic to be learned at their selection).

It is therefore respectfully submitted the evidence is demonstrative, is factual, is not vague, and shows the specific means and interaction of the demonstrative prototype CD ROMs of Exhibit E. This evidence is not mere allegations of the inventor but physical, demonstrative and in existence at the alleged time prior to the effective date of the cited references.

As clearly stated in Applicant's specification, the high level idea is to allow a learner in an interactive program to have immediately available at least two virtual tutors. One virtual tutor is more plain speaking, blunt, or less sophisticated than a second virtual tutor, which is more professorial. That exemplary embodiment is discussed throughout Applicant's specification. Applicant's specification in detail describes how this combination allows learners to learn better by giving them the flexibility of using the virtual tutors in the way deemed most beneficial to the learner. That means a first learner might learn better by always calling upon the plain speaking "huh?" virtual tutor. A second learner may learn better by always calling on the professorial "tell

me more!" virtual tutor. A third learner might learn better by sometimes using the plain speaking virtual tutor and sometimes the sophisticated tutor; or using both.

That paradigm matches identically with Applicant's claim 1 and with the actual reduced-to-practice interactive CD-ROM-based programming in the exhibits of record. It is therefore respectfully requested that Applicant's allegation that the references Cook and Hatakama are antedated be reconsidered and that the § 103 rejections be withdrawn.

Other evidence of record is demonstrative, factual, and corroborative of the prior reduction to practice of the invention of one or both of Cook and Hatakara.

Exhibit A is the equivalent of a software flow chart from which the coding of the CD ROMs of Exhibit E was derived. As stated in the evidence of record, that flow chart was put in tangible form prior to the effective date of the cited references. It is identical to Figure 2 of Applicant's specification. The left side shows the flow pattern of a topic module (the information to be learned). The middle section shows the various points in the programming where the user can selectively call for either of the "huh or plain" (first level of sophistication) or "tell me more or enhanced" (second level of sophistication) additional learning options. It matches up precisely with the paradigm of the CD ROMs of Exhibit E. Still further, Exhibits C and D relate to copyright registrations that include deposits of source code which had a publication date earlier than the Cook reference and which is consistent with the source code associated the CD ROM of Exhibit E.

Exhibit G specifically was presented to show the existence of WAV audio files associated with the "huh" and "tell me more" learning options to demonstrate and corroborate the existence of multi media versions of different voices or characters commensurate with gruff (plain) or professorial (enhanced) optional instructional help.

Applicant's other claims are similarly supported by Exhibits A-I. Independent claim 11 is for an apparatus but its elements a and b are parallel to the steps of claim 1. Independent claim 16 is a learning system but has language parallel to claim 1. The remainder of the claims are dependent from one of independent claims 1, 11, or 16. It is therefore respectfully submitted that the evidence of record antedates the cited references Cook and Hatakama for all claims of the application.

The evidence of record therefore shows completed reduction to practice of Applicant's claimed invention prior to the effective date of either Hatakama or Cook. The reduction to practice is a prototype computer program on CD ROM that was in existence at least as early as March 7, 1995. The evidence of record provides an actual photocopy of the CD as well as printouts from the CD that show file creation dates prior to the effective dates of the cited reference, as well as screen displays and text files that show how learning proceeds with the user selectable two levels of sophistication of learning assistance options.

To further corroborate reduction to practice of Applicant's claimed invention prior to the effective dates of the prior art references, a SECOND SUPPLEMENT DECLARATION OF PRIOR INVENTION is submitted with this response. The second supplemental declaration includes as Exhibit L an actual CD ROM with a digital copy of the content of the March 7, 1995 demo CD ROM of Exhibit E. Additionally, Exhibit M is a second demo CD ROM reducing Applicant's claims to practice -- it includes a digital copy of the content of an April 22, 1995 prototype CD ROM which implements many of Applicant's pending claims. It should be noted that the creation dates of the files on Exhibits L and M are when those files were copied onto the CDs of Exhibits L and M, and not the actual date of creation of the digital content of the program and the files on the CD ROMs, which was March 7 and April 22, 1995 respectively. Other



evidence of record has been provided to corroborate existence of those files as of a date earlier than the effective dates of Hatakama and Cook.

Exhibits L and M are submitted to provide for the Examiner the ability to actually open and view on a computer the content of these demo programs. The Examiner will be able to peruse the content and compare it with the prior evidence of record to corroborate a reduction to practice of the claimed invention prior to the effective date of the cited references.

The Applicant has retained the original March 7 and April 22, 1995 CDs but provides digital copies of the content of those CDs in Exhibits L and M for the Examiner to see that actual digital content. Below are instructions to assist the Examiner in opening the CDs of Exhibits L and M on a Windows XP Professional operating system. If the Examiner encounters any difficulties, the Examiner is urged to contact Applicant's company at the telephone number given at the header of each set of the following instructions. Alternatively, Applicant would be willing to personally demonstrate these CDs to the Examiner at the Patent Office at a mutually convenient time.

**INSTRUCTIONS FOR OPERATING THE PCARD DEMO CD DATED 03/07/1995 ON  
WINDOWS XP PROFESSIONAL OPERATING SYSTEM**

**NOTE: IF ANOTHER OPERATING SYSTEM IS USED TO VIEW THIS CD AND ANY  
DIFFICULTIES ARE ENCOUNTERED, PLEASE CONTACT MCKIRCHY &  
COMPANY AT 563-332-8888 FOR ASSISTANCE.**

1. Load the CD in a CD-ROM drive.
2. Click on Start on the Windows XP menu in the lower right of your screen and then click on My Computer
3. Click on the CD-ROM Drive location – if presented with a dialog box, do **not** “Play” the CD – just “Cancel” the dialog box.
4. On the Menu at the top left of the screen, choose “View” and then choose “Details” to view the files on the CD-ROM. Note the dates are the date this copy was made and not the dates the original CD was made. The original 03/07/1995 CD remains in Applicant's possession. If inspection of the original 03/07/1995 CD is required, it will be produced in person for the Patent Examiner. Otherwise, see **Exhibit G** for actual file names and their associated actual dates of creation.
5. Find the file called **PCARD** (this is an executable file) and click on it.
6. When the program loads, and the screen as shown in “**Exhibit H**” is shown, in the lower left corner click on “**Learn About It.**”
7. Next, in the lower right corner, click on “**Continue.**”
8. On the right side of the screen click on “**I want to jump right into a discussion.**”
9. Note the instruction on the left side of the screen and the “**Tell me more.**” on the right side of the screen. “**Tell me more**” as demonstrated here is described in at least Claims 2 and 27 of Applicant’s application.
10. Click OK on the right side of the screen.
11. On the right side of the screen, click “**I’m ready to continue with the discussion.**”
12. Note the question on the left side of the screen. On the right side of the screen, click the answer “**It’s only for Government Business.**”

13. Note the feedback to your answer on the left side of the screen. On the right side of the screen, click **“Continue.”**
14. This is the screen as shown in **Exhibit I**. Note the instruction on the left side of the screen. **Note the “Huh?” and “Tell me more.”** additional instructional options on the right side of the screen. These additional instructional options are described in at least Claims 1, 2, 3, 4, 7, 8, 9, 11, 14, 16, 19, 21, 22, 23, 25, 27 (as the number and type of instructional information has varied from # 9 above) 28, 29, 30, 34, 36, 37, 39, 40 and 41 of Applicant’s application.
15. Hold your mouse over **“Huh?”** and **“Tell me more.”** And note that they are both selectable by the user at any time and in any order.
16. Click on **“Huh?”** to view the textual content.
17. Click **“OK.”**
18. Click on **“Tell me more.”**
19. Click **“OK.”**
20. Click on **“I’m ready to continue with the discussion.”**
21. Note the question posed on the left side of the screen. On the right side of the screen, click the answer **“You are authorized to spend Government funds.”**
22. Note the presence of **“Huh?”** and **“Tell me more.”** as additional instructional options available with feedback to the answer you chose to the question in #21 above. This implementation is described in at least Claims 1, 2, 3, 4, 5, 8, 9, 11, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40 and 41 of Applicant’s application in light of the implementations present on this CD as described at #9 and #14 above.

**INSTRUCTIONS FOR OPERATING THE PCARD DEMO CD DATED 04/22/1995 ON  
WINDOWS XP PROFESSIONAL OPERATING SYSTEM**

**NOTE: IF ANOTHER OPERATING SYSTEM IS USED TO VIEW THIS CD AND ANY  
DIFFICULTIES ARE ENCOUNTERED, PLEASE CONTACT MCKIRCHY &  
COMPANY AT 563-332-8888 FOR ASSISTANCE.**

1. Load the CD in a CD-ROM drive.
2. Click on Start on the Windows XP menu in the lower right of your screen and then click on My Computer
3. Click on the CD-ROM Drive location – if presented with a dialog box, do **not** “Play” the CD – just “Cancel” the dialog box.
4. On the Menu at the top left of the screen, choose “View” and then choose “Details” to view the files on the CD-ROM. Note the dates are the date this copy was made and not the dates the original CD was made. The original 04/22/1995 CD remains in Applicant's possession. If inspection of the original 04/22/1995 CD is required, it will be produced in person for the Patent Examiner.
5. Find the file called **PCARD** (this is an executable file) and click on it.
6. When the program loads, in the lower left corner click on “**Learn About It.**”
7. Next, in the lower right corner, click on “**Continue.**”
8. On the right side of the screen click on “**I am ready to continue with the discussion.**”
9. Note the instruction on the left side of the screen and the “**Huh?**” And “**Tell me more.**” Additional instructional options on the right side of the screen. Hold your mouse over “**Huh?**” and “**Tell me more.**” and note that they are both selectable by the user at any time and in any order. Click on “**Huh?**” and “**Cancel**” to close it. Click on “**Tell me more.**” and “**Cancel**” to close it. These additional instructional options are described in at least Claims 1, 2, 3, 4, 7, 8, 9, 11, 14, 16, 19, 21, 22, 23, 25, 27 (as the number and type of instructional information has varied from #13 below) 28, 29, 30, 34, 36, 37, 39, 40 and 41 of Applicant's application.
10. On the right side of the screen click on “**I am ready to continue with the discussion.**”

11. Note the question on the left side of the screen and the answers the user can select on the right side of the screen. Choose the second answer.
12. Note the feedback to the answer you chose on the right side of the screen.
13. On the right side of the screen, click the one instructional option “**Tell me more.**” “**Tell me more**” as demonstrated here is described in at least Claims 2 and 27 of Applicant’s application.

Therefore, over and above the prior evidence of record, the Second Supplemental Declaration and Exhibits L and M put in the hands of the Patent Office the actual digital content from the demo CDs in March and April of 1995. The Second Supplemental Declaration also matches up how this content relates to some of the prior evidence of record. Together this further corroborates actual reduction to practice of the claimed invention prior to the effective date of the cited references such that Hatakama and Cook should be removed as rejections to Applicant's claims.

### **35 U.S.C. § 101 Rejection**

Reconsideration is also requested of the rejection of claims 16-21 and 35-41 as being nonstatutory.

Claim 16 specifically calls out content on "digital media" that is viewable and perceivable by a user on an "information processing device". This is concrete, useful and tangible and fits within the apparatus statutory classes.

The claim requires a "device". It requires "digital media". Both are physical and structural. This language has been used in other patents allowed by the Patent Office.

To the extent such language is not deemed to be sufficient to overcome this rejection, the undersigned would appreciate any suggestions by the Examiner.

### **Conclusion**

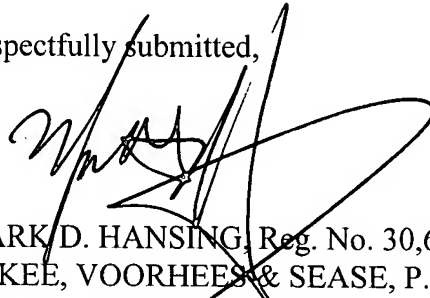
It is respectfully submitted all matters raised by the Final Rejection have been addressed and remedied and that the application is in form for allowance. Favorable action is respectfully requested.

If the Examiner does not feel the evidence of record is sufficient for antedating Cook and Hatakama, the undersigned would appreciate a telephonic interview to discuss what further issues remain.

This is a request under the provision of 37 CFR § 1.136(a) to extend the period for filing a response in the above-identified application for three months from June 13, 2007 to September 13, 2007. Applicant is a small entity; therefore, please charge Deposit Account number 26-0084 in the amount of \$510.00 to cover the cost of the three-month extension. Any deficiency or overpayment should be charged or credited to Deposit Account 26-0084. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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Enclosures:

SECOND SUPPLEMENTAL DECLARATION OF PRIOR INVENTION  
with Exhibits L and M